

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RANDY S. EISTER)	
Claimant)	
VS.)	
)	
TWI, INC., and DILLON COMPANIES , INC.)	Docket No. 233,945
Respondents)	
AND)	
)	
INSURANCE COMPANY UNKNOWN and)	
SELF-INSURED)	
Insurance Carriers)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

Claimant appeals the preliminary hearing Order of Administrative Law Judge John D. Clark dated May 13, 1999. The Administrative Law Judge denied claimant benefits, finding that he had failed to prove a work-related accidental injury on April 6, 1998.

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment on the date alleged?
- (2) Did claimant provide timely notice of his accidental injury, as required by K.S.A. 44-520?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant alleges accidental injury on April 6, 1998, when, while unloading a truck, he slipped and fell, injuring his back. Respondent denies the accident occurred and further denies claimant advised respondent in a timely fashion that the accident occurred.

Claimant alleges he told Bertram Frye, his supervisor, and Thomas Falcon, the manager of the Dillons store where claimant was delivering his load. Both Mr. Frye and Mr. Falcon deny any knowledge of the incident.

Claimant also testified, on page 53 of his deposition, that he came back the next day and worked, but refused to do anything. On page 55, he testified he resumed working about three days later, on April 9 or April 10, 1998. However, the work records placed into evidence at preliminary hearing show that claimant missed no work and, in fact, worked 88 hours the week of April 6, 1998, and 84 hours the week following. Claimant's temporary contract of employment terminated on April 20, 1998, at which time claimant returned to his home state of California. For unknown reasons, claimant delayed seeking medical treatment until June 7, 1998.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to the benefits requested. This must be done by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1997 Supp. 44-508(g).

Claimant's testimony, in this instance, is contradicted by both claimant's immediate supervisor and the manager of the Dillons store where claimant made deliveries. Claimant's testimony is also contradicted by the fact that he continued working 12- to 16-hour days until his temporary employment contract with TWI terminated on April 20, 1998. Finally, the credibility of claimant's testimony is further eroded by the fact that claimant, even though returning to California approximately April 20, 1998, failed to seek medical treatment until June 7, 1998.

The Appeals Board finds, after reviewing the credible evidence, that claimant has failed to prove accidental injury arising out of and in the course of his employment with respondent on the date alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated May 13, 1999, should be, and is hereby, affirmed, and claimant is denied benefits against respondent, TWI, Inc., and respondent, Dillon Companies, Inc., for an alleged accidental injury of April 6, 1998.

IT IS SO ORDERED.

Dated this ____ day of June 1999.

BOARD MEMBER

c: Russell B. Cranmer, Wichita, KS
Scott J. Mann, Hutchinson, KS
Bryce A. Abbott, Wichita, KS
Christopher J. McCurdy, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director